

IT 96-16
Tax Type: INCOME TAX
Issue: Non-filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

TAXPAYERS

Taxpayers

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No.

C. Ladewig
Admin. Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: ATTORNEY for TAXPAYER; TAXPAYEER appearing pro se.

Synopsis:

This matter comes on for hearing pursuant to the taxpayers' timely protest of the Notice of Deficiency issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") on June 28, 1994 in the amount of \$16,646.00. The Notice of Deficiency proposed additional taxes of \$10,712.00, a Section 1005 penalty in the amount of \$2386.00 and a Section 1001 penalty in the amount of \$3,548.00. TAXPAYERS (hereinafter referred to as the "taxpayers") failed to notify the Department pursuant to 35 ILCS 5/506(b) of the final federal changes that increased their adjusted gross income for the 1989 taxable year. At issue are the questions 1) whether the taxpayers are liable for additional Illinois Income taxes due to final federal changes to their adjusted gross income for the year ended December 31, 1989, and 2) whether Section 1001 and 1005 penalties should be abated due to the existence of reasonable cause. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the taxpayers on both issues.

Findings of Fact:

1. The Department's *prima facie* case was established with the introduction into evidence of the Amended Notice of Deficiency dated June 28, 1994. Dept. Ex. No. 3.

2. On October 17, 1990, TAXPAYER filed her 1989 US1040 return with the IRS as married filing a separate return. Said return was prepared by her uncle, XXXXX, a tax attorney who resided in Ohio. The return reported \$22,000.00 as wages and \$364,439.73 as income from rent, royalties... etc. Taxpayer Ex. No. 1.

3. It was taxpayers usual practice to sign and mail a blank return. XXXXX would then prepare and file taxpayers' return.

4. The \$364,439.73 was income derived from ownership of CORPORATION, a Florida S-corporation, managed by XXXXX.

5. This income from rent, royalties... income was never received by TAXPAYERS. Taxpayers were unaware that this income was reported on their return.

6. On September 5, 1991, taxpayers filed a 1989 US1040X as married filing jointly which reported their adjusted gross income at \$396,435.07. Taxpayer Ex. No. 2. This return was also prepared by XXXXX.

7. On September 19, 1991, taxpayers filed a 1989 US 1040 which was prepared by XXXXX and reported \$396,435.07 as adjusted gross income. Taxpayer Ex. No. 3.

8. The Amended Notice of Deficiency dated June 28, 1994, was issued to taxpayers for failure to report completed and settled federal changes and proposed penalties under Section 1001 and 1005. The as corrected adjusted gross income was stated to be \$396,435.00. Dept. Ex. No. 3.

9. On May 5, 1992, TAXPAYER filed a US 1040X as married filing a separate return. This amended return excluded the Schedule E income reported and received by her uncle, XXXXX.

10. The US1040X return was accepted by the IRS on April 11, 1994. This return reported a decrease in income and corrected taxpayer's original and erroneous status as a shareholder of CORPORATION. A refund was received from the IRS in May of 1994. Dept. Ex. No. 4; Taxpayer Ex. No. 4-8.

10. On March 7, 1994, subsequent to the acceptance by the IRS of her 1989 1040X return, TAXPAYER filed an IL1040 return. This IL1040X return reported a refund of \$149.00. This IL1040 used the Adjusted Gross Income accepted by the IRS on April 11, 1994. Dept. Ex. No. 4E.

11. TAXPAYER filed a 1989 IL1040 return_subsequent to the acceptance of TAXPAYER's US1040X return by the IRS. Dept. Ex. No. 4F.

12. On July 11, 1994, TAXPAYER prepared a IL1040X return which reported a refund of \$774.00. Dept. Ex. No. 4G.

Conclusions of Law:

In the present case, an Amended Notice of Deficiency (hereinafter referred to as "NOD") was issued by the Department to adjust line 1 of taxpayers' Illinois Income Tax return to reflect federal adjusted gross income. The NOD also adjusted their allowable exemptions due to a completed and settled federal change (US 1040X).

Section 5/506(b) of the Illinois Income Tax Act provides in relevant part:

In the event the taxable income, any item of income or deduction, or the income tax liability reported in a federal income tax return of any person for any year is altered by amendment of such return or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alteration reflects a change or settlement with respect to any item or items, affecting the computation of such person's base income for any year under this Act, or in the number of personal exemptions allowable to such person under Section 151 of the IRC, such person shall notify the Department of such alteration. ...

35 ILCS 5/506(b).

When the Department examines and corrects a return it shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount due as shown therein. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773 (1987). There is a statutory burden upon the taxpayer to establish by competent evidence that the corrected return of this Department is not correct and until the taxpayer provides such proof, the corrected returns are presumptively correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1965).

The court in Quincy Trading Post, Inc. v. Department of Revenue, 12 Ill.App.3d 720, 730 (1983), cited Copilevitz with approval and said: "In Copilevitz, the Supreme Court said that the Act and its regulations are "explicit in its demand for documentary evidence... ." The language of that case indicates that evidence corroborating statements of the taxpayer and other supporting data is necessary.

A taxpayer has all of his books and records, so, if wrongfully assessed, he can easily overcome the *prima facie* case of the Department at hearing.

In the present case, taxpayers' provided documentation to prove that their 1989 US1040 was amended and accepted by the IRS on April 11, 1994. Consequently, the adjusted gross income determined in the Amended Notice of Deficiency, issued June 28, 1994, was not based on a final federal determination. Such evidence provided by the taxpayers is sufficient to overcome the Department's *prima facie* case.

The IL1040 and IL1040X filed by taxpayers along with their protest reported refunds to both taxpayers and were prepared pursuant to the final federal changes accepted by the IRS on April 11, 1994. Since taxes are not due from either taxpayer, penalties are inappropriate and the Amended Notice of Deficiency must be withdrawn.

Wherefore, for the reasons stated above, it is my recommendation that the Amended Notice of Deficiency dated June 28, 1994 be withdrawn in its entirety.

Christine E. Ladewig
Administrative Law Judge